

COOK COUNTY SHERIFF'S MERIT BOARD

Sheriff of Cook County

vs.

Jaimie Mireles
Correctional Officer
Star #8794

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Docket # 1774

DECISION

This matter coming on to be heard pursuant to notice before Kim R. Widup, Board Member, on October 23, 2014, the Cook County Sheriff's Merit Board finds as follows:

Jurisdiction

Jaime Mireles, hereinafter "Respondent," was appointed a Correctional Officer on February 21, 2006. Respondent's position as a Correctional Officer involves duties and responsibilities to the public; and

Each member of the Cook County Sheriff's Merit Board, hereinafter "Board", has been duly appointed to serve as a member of the Board pursuant to confirmation by the Cook County Board of Commissioners, State of Illinois, to sit for a stated term; and

The Board has jurisdiction of the subject matter of the parties in accordance with Chapter 55 of the Illinois Compiled Statutes; and

The Respondent was personally served with a copy of the Complaint and notice of hearing and appeared before the Board with counsel to contest the charges contained in the Complaint; and

The Board has heard the evidence presented by the Sheriff and the Respondent and has evaluated the credibility of the witnesses and supporting evidence. After considering the evidence, the Board finds as follows:

Background

On April 5, 2010, the Respondent was assigned to the Receiving Classification Diagnostic Center (RCDC and/or Receiving), in Division V, of the Cook County Department of Corrections (CCDC), 2700 S California Boulevard, Chicago, IL 60608. On June 25, 2012, the Respondent was assigned to Division XI, CCDC, 3015 S California Boulevard, Chicago, IL 60608.

On March 31, 2012, while on duty at RCDC of the CCDC, the Respondent used excessive force against a non-combative detainee by striking the left side of the detainee's face with his right hand.

On March 31, 2012, the Respondent failed to submit a Response to Resistance/Use of Force Form or Incident Report documenting that the Respondent used force against a detainee when Respondent struck a non-combative detainee on the left side of the face with his right hand.

A videotape recording from a stationary camera in RCDC on March 31, 2012, at approximately 1609 hours, shows a detainee walking up to a counter and leaning forward into the counter. The recoding shows the Respondent lifting his right hand and striking a detainee on the left side of his face with his right hand.

On March 26, 2014, investigators from the Cook County Sheriff's Office of Professional Review (OPR) sent Respondent a letter via certified mail affording the Respondent the opportunity to be interviewed by investigators from OPR on April 8, 2014, regarding this incident. The Respondent failed to present himself at OPR on April 8, 2014, and no interview occurred.

By complaint dated July 22, 2014, upon a finding of guilt, the Petitioner sought the removal of the Respondent from employment with the CCSO.

Issues Presented

The Respondent was charged based on his actions detailed above with violations of the Rules and Regulations and General Orders of the Cook County Sheriff's Department of Corrections, specifically:

Sheriff's Order 11.2.1.0 Response to Resistance/Use of Force Policy, in its entirety, including, but not limited to, the following subparts:

II. Policy

Officers shall use an amount of force reasonable and necessary based on the totality of the circumstances to perform a lawful task, effect an arrest, overcome resistance, control a subject, or protect the officer(s) or others from injury, as specified by federal/Illinois statutes and case law.

The CCSO utilizes the Use of Force Model (2010) – John C. Desmedt and Protective Safety Systems Incorporated to provide guidance on the appropriate amount of force to be used to effect a lawful purpose and to articulate a detailed report on the officer's actions. The Use of Force model employs the progressive and reasonable escalation and de-escalation of officer applied force in proportional response to the actions and level of resistance offered by a subject.

Every use of force greater than social control, officer presence or verbal control must be reported as outlined in this directive. Officers shall not unreasonably endanger themselves or another person to conform to the restrictions of this directive.

V. Definitions

E. Excessive force – The application of an unreasonable amount of force in a given incident based on the totality of the circumstances.

S. Use of force – The application of physical, chemical, mechanical measures to compel compliance by an unwilling subject. Every use of force greater than social control, officer presence or verbal control must be reported as outlined in this directive.

VII. Guidelines

A. The primary objective of the use of force is to ensure control of a subject with only the amount of reasonable force necessary based on the totality of circumstances and to gain compliance of the subject as safely and quickly as possible.

B. Officers are authorized to use only the amount of force necessary to effect lawful objectives. The determination of what is or is not reasonable force is based on each individual situation and is a decision that the

involved officer must make based on the totality of the circumstances.

D. Using force as a response to subject's failure to follow instructions where there is no immediate threat to the safety of the institution, inmates, general public, or staff is authorized only when the officer has attempted nonphysical alternatives that are documented.

X. Prohibited Acts

The use of excessive force is prohibited. Officers using excessive force, unwarranted physical force, or verbal abuse shall be subject to disciplinary action up to and including termination of employment.

A. The following acts are prohibited:

4. Use of force as a response to verbal insults or subject threats where there is no immediate threat to safety of the institution, subjects, or staff:

6. Striking, hitting, or punching a restrained or handcuffed and non-combative subject;

XIII. Applicability

A. By order of the Sheriff of Cook County, this Sheriff's Order applies to all CCSO officers and must be strictly observed.

B. Any conflicts with previous orders, policies or procedures shall be resolved in favor of this order.

C. All CCSO officers are required to familiarize themselves with the contents of this order and to adhere to the policy established herein.

Sheriff's Order 11.2.2.0 Response to Resistance/Use of Force Duties, Notifications and Reporting Procedures, in its entirety, including, but not limited to, the following subparts:

II. Policy

Staff involved in a response to resistance/use of force incident, whether on-duty or off-duty must be in compliance with procedures stated in the current CCSO Response to Resistance/Use of Force Policy.

The CCSO utilizes the Use of Force Model (2010) – John C. Desmedt and Protective Safety Systems Incorporated to provide guidance on the appropriate amount of force to be used to accomplish a lawful purpose and to articulate a detailed report on the officer's actions. The Use of Force model employs the progressive and reasonable escalation and de-escalation of officer applied force in proportional response to the actions and level of resistance offered by a subject.

Every use of force greater than social control, officer presence or verbal control

must be reported as outlined in this directive.

V. Duties, Notifications, and Reporting Procedure

- A. The officer involved in the use of force incident, whether on-duty or off-duty, must perform the following:
 2. Immediately make a verbal notification to his/her supervisor that he/she has been involved in a response to resistance/use of force incident. The statement shall include, but not be limited to the following:
 - a. Information regarding the subject's actions and the officer's response to resistance;
 - b. The type of force used;
 4. All officers who use force must submit a Response to Resistance/Use of Force Form and complete the Officer Statement section. Incidents which do not require documentation on a Response to Resistance/Use of Force Form are:
 - a. Un-resisted handcuffing or un-resisted shackling of subjects for movement purposes, routine transportation, searches, or the use of general security devices and protocol;
 - b. The use of a firm grip hold which does not result in an injury or allegation of an injury;
 - c. The use of force necessary to overcome non-moving resistance due to physical disability or intoxication which does not result in injury or allegation of injury;
 - d. The use of handcuffs and search techniques which do not result in injury or allegation of injury;
 - e. The use of social and/or verbal control where the subject complies.
 6. Complete and submit reports within two hours of the incident taking place. Additional time required must be approved by a supervisor and the detailed reasons for the extension shall be included in the narrative section of all required reports. In any case, all reports shall be filed by the end of the officer's tour of duty. If the reporting officer is unable to complete and submit reports, refer to Section V, subsection B.6 of this order.

General Order 3.8 Ethics and Standards of Conduct, in its entirety, including, but not limited to, the following subparts:

I. Policy

It is the policy of the Cook County Department of Corrections (CCDC) that employees will conduct themselves in a professional and ethical manner, both on and off duty. Employees will not engage in activities unbecoming of county employees, or conduct that reflects unfavorably to the Office of

the Sheriff of Cook County.

III. Requirements

The CCDC Code of Ethics requires the highest level of conduct from all employees. It is the expectation that sworn and civilian employees conduct themselves with high standards of professional conduct and behavior. Employees that fail to maintain high standards of conduct and ethics, will be subject to corrective or disciplinary action, and may include recommendation for termination.

A. Compliance with Laws and Regulations

4. Employees will comply with lawful departmental rules, written procedures, directives, bulletins, and verbal orders issued by the proper authorities.

A. Professional Conduct

2. Detainees will not be subjected to sexual, emotional, verbal or physical abuse or the use of unnecessary levels of force.

4. Employees will not commit acts that jeopardize security of the facility or the health, safety and welfare of detainees, staff and visitors.

General Order 4.1 Internal Investigations, in its entirety, including, but not limited to, the following subparts:

III. Requirements

Misconduct, which impairs an employee's ability to perform his/her assigned responsibilities, or adversely affects or involves the Cook County Department of Corrections and/or the Office of the Sheriff of Cook County, may be cause for disciplinary action.

Serious misconduct would include these violations of the law which constitutes a misdemeanor or felony, or alleged/suspected, violations of Cook County Department of Corrections rules and orders which pose a threat to the safety of staff or inmates or the security of the institution. Included also is misconduct committed while an employee is off duty/outside the institution where in the official character and status of the employee as a correctional officer, deputy sheriff, law enforcement officer, or civilian correctional employee becomes identifiable and calls into question the reputation of the County of Cook, the Office of the Sheriff, or the Department of Corrections.

A. Guidelines for Serious Misconduct include but are not limited to:

10. Inmate, employee or visitor abuse.

17. Engage in any conduct unbecoming an employee of the Cook County Department of Corrections, which tends to reflect discredit on the Department of Corrections or Sheriff's Office.

General Order 24.9.1.0 Reporting Incidents, in its entirety, including, but not limited to, the following subparts:

II. Policy

It is the policy of the CCDC to have written procedures for reporting and documenting incidents involving staff, inmates, and visitors, as well as to ensure that the incidents or problems with the facility, i.e., sanitation, plumbing, electrical, ventilation, or any situation that creates a dangerous workplace, are reported and documented in a timely and professional manner.

Employees shall immediately report to their supervisor any information indicating a violation or attempted violation of criminal laws, or a threat to the safety and security of the facility, its property or any person.

Reports shall be made verbally and in writing as directed by this order.

VII. Procedures

A. Notification

1. All reportable incidents occurring within CCDC involving staff, inmates, or visitors are required to be verbally reported and documented on an Incident Report by staff via the chain of command.
2. Response to resistance/use of force incidents by staff shall be reported in accordance with the current Cook County Sheriff's Office (CCSO) Response to Resistance/Use of Force policy.

C. An employee failing to file a report or filing a false report shall be subject to disciplinary action up to and including termination of employment and/or the filing of criminal charges.

F. General Reporting Guidelines

2. Complete and accurate documentation of events and incidents within CCDC facilities and other sites are essential. Written reports and reports in IMACS serve to keep staff informed of developments and problems within the facility. Reports are also instrumental in the planning and implementation of Sheriff's Office policies and procedures.

Finally, the Respondent was charged with a violation of the Rules and Regulations of the Cook County Sheriff's Merit Board, specifically:

Cook County Sheriff's Department Merit Board Rules and Regulations, in its entirety, including, but not limited to, the following subparts:

Article X, Paragraph B:

No Police Officer of the Cook County Sheriff's Police Department, Correctional Officer of the Cook County Department of Corrections, or any Deputy Sheriff of the Cook County Sheriff's Court Services Department will:

1. Violate any Law or Statute of any State or of the United States of America.
2. Violate any Ordinance of any County or Municipal Government.
3. Violate any of the General Orders, special orders, directives, or rules and regulations of the Cook County Sheriff's Office.

Findings of Fact

This matter was called for trial on October 23, 2014, after the case was continued on several occasions based upon the needs of the Petitioner and/or the Respondent's request through counsel, and the completion of all discovery matters. At the trial, with a court reporter being present, all witnesses were sworn under oath. The Respondent did testify. During the trial, documents were introduced by the Sheriff and the Respondent that were received into evidence. The Sheriff and Respondent made closings arguments addressing issues in the trial.

The trial began with both sides stipulating to Joint Exhibits 1-5, which were the following orders: Sheriff's Order 11.2.1.0, Response to Resistance/Use of Force Policy (Joint 1); CCDC General Order 4.1, Internal Investigations (Joint 2); CCDC General Order 3.8, Ethics and Standards of Conduct (Joint 3); Sheriff's Order 11.2.2.0, Response to Resistance/Use of Force Duties, Notifications and Reporting Procedures (Joint 4); and CCDC General Order 24.9.1.0, Reporting Incidents (Joint 5).

The first witness called by the Sheriff was [REDACTED], Sergeant, Video Unit, Bureau of Information and Technology, CCDC, who testified to the authenticity of a video recording system copy made from a CCDC video camera located in the Receiving Classification Diagnostic Center (RCDC), on March 31, 2012 (Sheriff's Exhibit 1). Sgt [REDACTED] identified the Respondent on the video as striking an inmate of CCDC in an area known as the "rapid booking area." Sgt [REDACTED] was familiar with the Respondent and able to identify him in the video and at the hearing. Sgt [REDACTED] identified that there were two different views of the Respondent striking the inmate, which were copied from the originals of two different cameras in RCDC.

[REDACTED] First Executive Director, CCDC, testified that on March 31, 2012, he was the Superintendent of Receiving/Records Classification, CCDC. Director [REDACTED] said that he became aware of the incident involving the Respondent when he was reviewing the reports and videos of an unrelated incident and noticed the incident in which the Respondent struck an inmate in the face with his hand on the video. He prepared a memo to OPR forwarding the video and requesting an investigation of the incident involving the Respondent (Sheriff's Exhibit 2). He did not interview the Respondent about the event and received no written Use of Force Report from the Respondent regarding the event.

On cross-examination Director [REDACTED] testified that he did not check with medical to see if the inmate depicted in the video went or received medical treatment. He said there was an area designated for medical within 200 feet of where the incident happened. Director [REDACTED] stated that a correctional officer could use force against a detainee to prevent an imminent battery. He agreed with the Respondent's counsel that being "spat on" (spit on) would constitute a battery.

On redirect examination Director [REDACTED] testified that the Respondent, in a separate and unrelated case, had punched a handcuffed inmate and had used excessive force in doing so.

[REDACTED] Investigator, OPR, CCSO, testified that he was the investigator responsible for the investigation of the Respondent. He has been with OPR for 13

months and prior to that time he had spent 30 years with the Orland Park Police Department, retiring at the rank of Lieutenant. Investigator [REDACTED] was assigned the investigation of the Respondent and another separate but unrelated investigation, both of which were on the video of March 31, 2012. Investigator [REDACTED] was limited to questioning about the Respondent's matter. Investigator [REDACTED] said that after he reviewed the video he sent a certified letter to the Respondent advising him that he was the subject of an investigation and ask him to contact him so he could arrange an interview with OPR (Sheriffs Exhibit 3). The Respondent was on medical leave at the time the letter was sent. The Respondent did not appear for an interview or contact Investigator [REDACTED] in any manner. Investigator [REDACTED] determined from the video that the Respondent struck an inmate in the face and had used excessive force. He listed this finding in his report. He was unable to locate and review any use of force reports regarding the incident, as there were none found. Investigator [REDACTED] identified the Respondent's disciplinary history (Sheriffs Exhibit 5), which showed the Respondent had previously six SPARS (Summary Punishment) and four OPR investigations. The Respondent was given a 30 days suspension for a previous use of force OPR investigation and 29 days suspension for a separate "conduct unbecoming" OPR investigation.

On cross-examination Investigator [REDACTED] said that he did not know if the Respondent had served any suspension time from the previous OPR investigations. He also did not review the previous SPARS or OPR investigations. Investigator [REDACTED] said that he did not interview the Respondent and made not attempts to contact him other than the initial letter he sent and his unsuccessful attempts to locate a phone number for the Respondent. He did not visit the Respondent's home, as he was not required to do so. He further testified that he was unable to locate the inmate who had been struck by the Respondent.

The Respondent was called to testify by the Petitioner. He has been employed by the CCSO since February of 2006. He is currently on duty injury. [REDACTED]

The Respondent acknowledged receiving the complaint via the mail for the current Merit Board case. He said that he did not initiate a report of the incident from March 31, 2012. He did not initiate a Use of Force Report for the incident nor did he initiate any type of discipline report for the inmate from the March 31, 2012, incident. The Respondent testified that he did not tell anyone that he struck the inmate. He said the inmate did go to medical after he struck him as part of the routine processing. The Respondent said he did not know if the inmate had a criminal record but believed that he had been arrested for criminal sexual assault against his nine-year old daughter. The Respondent said that the inmate was skinny and about his height which was 5'7" tall. The Respondent said his own weight was about 300 pounds. The Respondent said the inmate did not make any threatening remarks to him, did not attempt to assault him, was not attempting to destroy evidence but when the Respondent called the inmate over the inmate made a "hacking sound like he was going to spit on the Respondent. The Respondent struck the inmate in the face as depicted on the video before he could spit and the inmate never did spit on him. After striking the inmate the Respondent directed the inmate over to "get his number" and to continue with his routine processing.

The Respondent said that he did not provide a statement to OPR, as he had never received notification that OPR wanted to interview him. He had been interviewed by OPR in the past on other cases. He did not prepare any reports regarding his striking the inmate on March 31, 2012, as he forgot to prepare it. He did not report this incident to any of his supervisors. He had prepared use of force reports in the past on other incidents. The Respondent said that he had used force in 20-25 previous occasions against inmates as receiving was a tough place to work. In each of the previous occasions he had generated a use of force report and incident reports.

The Respondent said that in the other previous case that Director [REDACTED] testified about he did not strike a handcuffed inmate in the face. The inmate was handcuffed but the Respondent "slid the inmates head over" with an open hand to prevent the inmate from spitting on another correctional officer. He was suspended for 30 days after an OPR investigation into this matter but did not serve it.

Under cross-examination by his counsel the Respondent said that he had never served any suspension time for use of force. He said that he forgot to prepare a use of force report on the March 31, 2012, incident as there was another unrelated incident afterwards and this caused him to forget about the previous one in which he struck the inmate. The Respondent said that he had attended Use of Force training through the CCDC and was familiar with the General Orders governing the use of force. He said that he was within arms length of the inmate at the time of the event but could not push him away as the inmate was going to spit on him. He did not know that OPR wanted to interview him regarding the incident, as he was never contacted by OPR.

The Petitioner rested and after the denial of certain motions the Respondent rested as well without calling any witnesses.


Decision


The Board finds by a preponderance of the evidence through the testimony of the witnesses and the supporting evidence that the Respondent used excessive force against an inmate in violation of standing general orders. The Respondent failed to properly report his use of force either orally or in writing as called for in the directives and orders. The Respondent's past history is also indicative of his lack of the ability to control his use of force. Correctional Officers certainly may defend themselves against being spit on or otherwise assaulted by an inmate and may use the amount of force necessary to subdue an uncooperative individual as outlined in the Sheriffs and general orders. This was not the case here. The Respondent's testimony was less than credible. The Board is concerned that OPR did not make more of an effort to interview the Respondent and recommends this be addressed in future cases as the interview provides both the Respondent and the Sheriff the ability to have the best information available should the Respondent agree to be interviewed. The striking of an inmate without sufficient cause and the failure to report such an event are in violation of standing general orders and Sheriff's orders.


Conclusions of Law


Based on the evidence presented and after assessing the credibility of the witnesses and the weight to be given the evidence in the record, The Board finds that Respondent Jaimie Mireles, Star #8794, did violate Sheriffs Order 11.2.1.0, Section II, Section VII A, B, and D and Section X, A4 & 6; Sheriffs Order 11.2.2.0, Section II and V B2 a-b, B4 a-e, & B6; General Order 3.8, Section I and III A4, D2 & D4; General Order 4.1, Section II, A10 & A17; General Order 24.9.1.0, Section II and VII A1-2, C & F2; and Article X, Paragraph B of the Rules of the Cook County Sheriff's Merit Board.


Wherefore, based on the foregoing, it is hereby ordered that the Respondent Jaimie Mireles, be and is separated from employment with the Cook County Sheriff's Office effective July 22, 2014.



James P. Nally, Chairman


Byron Brazier, Vice Chairman


Brian J Riordan, Board Member


John J. Dalicandro, Secretary


Jennifer E. Bae, Board Member


Kim R. Widup, Board Member


John R. Rosales, Board Member


Vincent T. Winters, Board Member

Dated:

January 24, 2015